IN THE MATTER OF THE ARBITRATION BETWEEN

AFSCME Council 5, the Union,	)	
	)	**INTEREST ARBITRATION AWARD**
and	)	
Arrowhead Regional Corrections Board, the Employer.	)	**BMS Case No. 05-PN-1185**

Arbitrator: Barbara C. Holmes

Hearing Date: August 8, 2006

Close of Record: September 1, 2006

Post Hearing Briefs due: September 1, 2006

Date of Decision: September 8, 2006

Appearances:

For the Union: Sarah Lewerenz, Attorney at Law
AFSCME, Council 5
Duluth, Minnesota

For the Employer: Steven Fecker, Attorney at Law
Johnson, Killen & Seiler, P.A.
Duluth, Minnesota

INTRODUCTION

This is an interest arbitration proceeding arising under Minnesota's Public Employment Labor Relations Act (PELRA), Minn. Stat. Secs. 179A.01 – 179A.30. AFSCME, Council 5 (herein "the Union") is the exclusive representative of a unit of

essential employees of the Arrowhead Regional Corrections Board (herein "the Employer".)

The Union and the Employer have engaged in contract negotiations and have been successful in reaching agreement on some, but not all, of the items under consideration. The Bureau of Mediation Services (BMS) has certified the remaining items for interest arbitration and the parties have selected the undersigned neutral Arbitrator to hear evidence and render a final and binding decision on the unresolved issues. A one-day hearing was held and each party was given a full opportunity to present its positions through the testimony of witnesses, the introduction of exhibits and the submission of post-hearing briefs.

ISSUES AT IMPASSE

The BMS certified 15 issues to arbitration in September of 2005; however, the parties have since resolved all but three of those issues. The three issues presented for this arbitration are as follows:

Issue #1: Art. 11.1, Overtime calculation

Issue #2: Art. 11.5, Training pay

Issue #3: Art. 11.7, Shift Differential amount

BACKGROUND FACTS

The Employer provides correctional services to five counties in northeastern Minnesota's Arrowhead region. The Employer was formed pursuant to the Minnesota Community Corrections Act and a joint powers agreement between the participating counties of Carlton, Cook, Koochiching, Lake and St. Louis. An executive board made up of eight county commissioners from the five participating counties acts as the administrative head of the Employer.

The Employer has three functional divisions. The Arrowhead Juvenile Center is a 48-bed facility that provides detention and treatment services to male and female juvenile offenders. The Northeast Regional Corrections Center is a 150-bed minimum-level

security facility for adult male offenders. The Court and Field Services division provides probation and parole services to the five participating counties.

The Employer has four bargaining units: the Essential Unit has 71 employees, the Basic Unit has 135 employees, the Supervisory Unit has 11 employees and the Confidential Unit has 3 employees. Of the 71 employees in the Essential Unit, 34 work at the Northeast Regional Corrections Center and 37 work at the Arrowhead Juvenile Center. The Essential Unit's collective bargaining contract is the Employer's only contract that remains unresolved.

DISCUSSION AND AWARD

In most interest arbitrations the parties' wage proposals take center stage and, in recent years, difficult issues regarding health insurance reductions have been a focus of interest arbitrations. But in this matter the parties have settled the wage and health insurance issues for the contract's duration. Specifically, the parties have agreed to prospectively reinstate all steps that were withheld during a 2004 wage freeze and to increase base wages by 3% in 2005. Health insurance benefits were modified to include, among other changes, a new deductible provision of $250 per individual and $500 per family.

Although the issues in this matter are not pure wage issues, they have an impact on wages – how overtime is calculated, the amount of the shift differential and wage rates when attending training sessions. Where evidence has been provided regarding the economic impact of the proposals on either of the parties, it will be considered. Additionally, the proposals will be subject to the following standard:

> As a general proposition, an interest arbitrator should not alter longstanding contractual arrangements in the absence of a compelling reason to do so. Accordingly, most interest arbitrators will place the burden of the party proposing a change in the parties' relationship to demonstrate the need for such change by clear and compelling evidence. *International Association of Fire Fighters, Local 4115 and City of Bloomington*, B.M.S. Case No. 02-PN-462 (Befort, 2002).

ISSUE #1 – Art. 11.1, OVERTIME CALCULATION

A. Final Positions of the Parties

Union: Add the following language:

The overtime threshold shall be calculated based on compensated hours and not actual hours worked.

Employer: No change to the contract.

B. Award. The Employer's position is awarded.

C. Arguments of the Parties.

Union arguments. The Union argues that its proposed language will clarify what has been a past practice between the parties for at least 33 years for the essential employees who work at the Northeast Regional Corrections Center. Specifically, it argues that until 2004 the overtime threshold for triggering overtime pay included all compensated hours in a work week – actual hours worked, personal leave, holidays, compensatory time, military leave, vacation leave and sick leave.

The Union also supports its position by noting that four of the five counties that participate in the operations of the Employer calculate overtime based upon compensated hours. It points out that St. Louis County, the largest of the participating counties, had a wage settlement similar to this unit, yet has overtime calculated based upon compensated hours. It also argues that the Employer can control any cost issues created by this proposal because the Employer assigns overtime work.

Employer arguments. The Employer does not deny that the essential employees at the Northeast Regional Corrections Center were in fact being paid for overtime in this manner. However, the Employer claims that this was due to a "payroll error" that it was not aware of until 2004. The Employer discovered this payroll error when it implemented a new payroll processing system. It then began calculating overtime using

actual hours worked, which resulted in a grievance being filed by the Union. The Employer then moved the issue to contract negotiations by giving the proper notice that it intended to end any alleged past practice. The parties discussed the issue at negotiations but failed to come to any agreement.

The Employer views the Union's proposal as a request for a structural change to the compensation system that will substantially increase overtime costs. It states that the participating counties have already increased their annual funding to the Employer by an average of 11% in the past year to offset the cutbacks in state funding.

The Employer points out that the employees in the essential unit earn more than any other comparable employees in the five participating counties. It also notes that the wage settlement for this contract period was the same as St. Louis County's settlement. Although four of the five participating counties calculate overtime based upon compensable hours, the Employer states that only two of those counties do so pursuant to a collective bargaining provision; the remaining two counties have implemented their practice through policies that can be changed by the counties at any time.

The Employer points out that the parties have already locked in the major economic items and all of the remaining issues in this arbitration are Union proposals. Because of this, the Employer believes that there is no *quid quo pro* that can be awarded to the Employer should any of the Union's proposals be granted. It is also concerned about the resulting inconsistency across bargaining units, as the alleged practice applied only to a portion of one of its four bargaining units.

D. <u>Discussion.</u>

The issue of whether or not there is a binding past practice is not an issue that has been certified for this interest arbitration. However, in deciding whether or not there is a "compelling need" for the Union's proposal, the fact that the essential employees at the Northeast Regional Corrections Center have had the overtime threshold calculated using compensable hours for many years, with or without the Employer's knowledge, has been taken into account. Although I find this past practice evidence significantly supports the Union's proposal, I find that the Union's position does not rise to the level of a compelling need for the following reasons.

After reviewing the evidence that is usually supplied to support wage proposals, I find the wage settlement agreed to by the parties, which includes the reinstatement of the step increases that were lost during the 2004 wage freeze and the 3% increase in 2005 wages, to be a fair and reasonable settlement for both parties. Providing an additional economic benefit to the Union in the form of its proposal would alter the balanced nature of the economic settlement negotiated by the parties. Additionally, these employees already have the highest wages when compared to similar employees in the participating counties.

Also of significance in arriving at this ruling is the fact that only two of the five participating counties have collective bargaining provisions that calculate overtime based upon compensable hours.

ISSUE #2 – Art. 11.5, Training pay

A. Final Positions of the Parties

Union: Revise section by deleting the last sentence and adding the following:

~~When mandatory training sessions (including also staff meetings and team meeting, regardless of training content) proceed or follow a full shift of work, the employee will be compensated at the overtime rate provided that the employee does not have the alternative of attending the training at a time other than when this overtime rule applies~~. All training shall be paid at the time and one-half rate.

Employer: No change to contract.

B. Award. The Employer's position is awarded.

C. Arguments of the Parties.

Union arguments. The Union seeks to expand the circumstances under which employees are paid at the time and one-half rate for overtime that results from attending training sessions. Specifically, it argues that the distinction the Employer makes between "mandatory" training, which is directly assigned by the Employer, and non-assigned

training, which the employee chooses to go to with the Employers approval, is unfair. The Union believes that all training is "mandatory" because the Employer has a separate policy that all employees must obtain 40 hours of training; therefore it believes that overtime resulting from any type of training should be paid at the time and one-half rate. Because most training takes place during the day shift, the Union argues that the current provision is particularly unfair to employees who do not work the day shift. The Union argues that these employees must work their regular 40 hours, put in overtime hours for training and, if that training is non-assigned, get paid at the regular rate for the overtime hours.

Employer arguments. The Employer notes that its practice regarding training time is in accordance with the requirements of the Fair Labor Standards Act. It also notes that it does not require an employee working a nightshift to attend daytime training sessions that immediately follow the nightshift. It believes that this issue is best left to negotiations.

D. Discussion.

As stated above, the Union must show a compelling need for its proposal. While I agree with the Union that the distinction made by the Employer between mandatory and non-assigned training seems at odds with its policy requirement that employees attend 40 hours of training a year, I find that the Union has not shown a compelling need for its proposal. Contract provisions are sometimes at odds with policies. But because policies usually apply to all of the Employer's employees, these conflicts should be resolved in negotiations, not by an arbitrator.

ISSUE # – Art. 11.7, Shift Differential amount

A. Final Positions of the Parties

Union: Increase from $.35 per hour to $.75 per hour for the afternoon shift and increase from $.40 per hour to $1.00 per hour for the midnight shift.

Employer: No change to the contract.

B. Award. The Employer's position is awarded.

C. Arguments of the Parties.

Union arguments. The Union argues that the current shift differential rates are inadequate to compensate for the sacrifices that employees make in order to work the afternoon or night shift. In support of its argument the Union provided testimony from Shift Coordinator Chuck Voss regarding the negative impacts shift work has had on his physical health and family life. The Union also supports its argument through the numerous Internet articles it submitted as evidence of the negative impact of shift work.

Employer arguments. The Employer again argues that because the parties have already locked in the major economic items, there is no *quid quo pro* that can be made for the Union's proposal. The Employer also supplied evidence showing that the Employer's shift differential is higher than three of the five participating counties. Additionally, the Employer noted that some employees choose shift work.

D. Discussion.

Without discounting the significant impact working shifts undoubtedly has on an employee's health and personal life, a proposal to increase shift differential must be supported by internal and external comparisons of similar employees. Because the only evidence submitted supports the Employer's position, the Union has failed to prove a compelling need for this provision.

Dated: _____, 2006

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Barbara C. Holmes

Arbitrator